

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1215

Filed: 17 May 2016

Mecklenburg County, No. 11 CRS 257261

STATE OF NORTH CAROLINA

v.

MICHELLE GERARD LYTLE

Appeal from judgment rendered 5 June 2015 by Judge Daniel Kuehnert in Mecklenburg County Superior Court. Heard in the Court of Appeals 2 May 2016.

Attorney General Roy Cooper, by Assistant Attorney General John W. Congleton, for the State.

M. Shane Truett for defendant-appellant.

McCULLOUGH, Judge.

Michelle Gerard Lytle (“defendant”) appeals the denial of his motion to suppress following his guilty plea to driving while impaired. For the following reasons, we dismiss defendant’s appeal.

I. Background

On 20 May 2015, Judge Lisa C. Bell held a pre-trial hearing on defendant’s motion to suppress evidence obtained during a traffic stop on 30 December 2011. After Judge Bell denied the motion in open court, defendant consented to entry of a

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written order out of session. On 5 June 2015, defendant appeared before Judge Daniel Kuehnert¹ and pled guilty to driving while impaired while reserving his right to appeal the denial of his motion to suppress pursuant to N.C. Gen. Stat. § 15A-979(b). Judge Kuehnert rendered judgment in open court, sentencing defendant to a suspended 30-day term of incarceration and placing him on unsupervised probation for a period of 12 months.

Defendant gave oral notice of appeal at the conclusion of the plea hearing and filed notice of appeal the same day. Defendant's written notice of appeal designates "the Judgment as entered by the Honorable Lisa Bell, Superior Court Judge presiding, during a trial term within Judicial District 26, taking place in Charlotte, North Carolina in Mecklenburg County."

II. Discussion

In order for this Court to obtain jurisdiction over an appeal, the trial court must enter a judgment from which an appeal may be taken. *See Abels v. Renfro Corp.*, 126 N.C. App. 800, 803, 486 S.E.2d 735, 737 (1997). " 'Entry' of an order occurs when it is reduced to writing, signed by the trial court, and filed with the clerk of court." *State v. Gary*, 132 N.C. App. 40, 42, 510 S.E.2d 387, 388 (1999). "Announcement of

¹ Although the heading of the hearing transcript identifies Judge Bell as the presiding judge, the body of the transcript and the signed transcript of plea form indicate Judge Keuhnert accepted defendant's guilty plea.

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judgment in open court merely constitutes ‘rendering’ of judgment, not entry of judgment.” *Abels*, 126 N.C. App. at 803, 486 S.E.2d at 737.

The record on appeal filed by defendant does not contain a written judgment entered upon his guilty plea.² See N.C. R. App. P. 9(a)(3)(g) (requiring record on appeal to contain a copy of “the judgment, order, or other determination from which appeal is taken”). “This Court . . . is bound by the record as certified and can judicially know only what appears of record.” *State v. Williams*, 280 N.C. 132, 137, 184 S.E.2d 875, 878 (1971). As no final judgment has been entered, we are without jurisdiction to consider defendant’s appeal. *Gary*, 132 N.C. App. at 42, 510 S.E.2d at 388. Accordingly, the appeal is hereby dismissed. See *Abels*, 126 N.C. App. at 804, 486 S.E.2d at 738; *Searles v. Searles*, 100 N.C. App. 723, 726, 398 S.E.2d 55, 57 (1990); see also *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008) (“A jurisdictional default . . . precludes the appellate court from acting in any manner other than to dismiss the appeal.”).

DISMISSED.

Chief Judge McGEE and Judge ZACHARY concur.

Report per Rule 30(e).

² Nor does the record contain an order denying defendant’s motion to suppress.